IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4340 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VAGHARI KANTIBHAI POPATBHAI

Versus

COLLECTOR

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Appearance:

1. Special Civil Application No. 4340 of 1992

MR VIJAY H PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR SP SEN AGP for Respondent No. 2

MR PK JANI for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/07/2001

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the order dated 29th February, 1992 made by the State Government [Chief Secretary (Appeals), Revenue Department], in Revision Application No. 32 of 1991, the petitioner has preferred the present petition. It appears that the petitioner had applied to the Collector, Mehsana for regularization of his occupation of the Government land, Survey No. 355 admeasuring 3 acres 21 gunthas, situated at village Nedra, Taluka-Sidhpur. The said application was rejected by the Collector, Mehsana under his order dated 2nd April, 1991. Feeling aggrieved, the petitioner preferred above Revision Application No. 32 of 1991 before the State Government which too was rejected on 29th February, 1992. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Patel has relied upon the Government Resolution dated 8th January, 1980 and has submitted that it is the avowed policy of the State Government to regularize the encroachment of the Government land made by the persons belonging to backward community. The petitioner belongs to one of such backward community, the petitioner's occupation of the Government land requires to be regularized and the said land, Survey no. 355 ought to be granted to the petitioner for cultivation. Mr. Patel has relied upon the panchnama dated 7th July, 1991 and the extract of the village form no. 7/12. He has submitted that the said land was granted to the father of the petitioner one Popat Raghjibhai in the year 1963-64 and since then, the said Popat Raghji was in possession of the said land and was cultivating the same. After the death of the said Popat Raghji, the petitioner has continued to occupy the said land and to cultivate the same. He has, therefore, submitted that the orders of the authorities below are contrary to the records and the Government policy and are required to be set-aside.

I am unable to agree with the contentions raised by Mr. Patel. The extracts of the village form no. 7/12 reveals that the land, Survey No. 355 admeasuring 3 acres 2 gunthas is the Government Waste Land and was granted to one Popat Raghji in the year 1963-64. In the said year, the said Popat Raghji had raised vegetables. Even thereafter till the year 1966-67, the occupation of the said Popat Raghji has been recorded and he had raised vegetables on the said land. However, since the year 1967-68, the land is shown to be `waste land' and it has not been cultivated till the date. It, therefore, cannot be believed that the said Popat Raghji or the petitioner thereafter has continued to occupy and cultivate the said land till the year 1991, as is made out. The panchnama

produced by Mr. Patel is also not reliable. The said panchnama has not been prepared under the orders of any authority or in presence of any authority. The respondent Gram Panchayat has filed its counter affidavit and has stated that the petitioner was never in occupation of the said land and that the said land was required by the Gram Panchayat for village site. The Gram Panchayat has also questioned the veracity of the panchnama produced by the petitioner. The State Government has also filed its counter affidavit and has denied the averments made in the petition. Upon perusal of the documents annexed to the counter affidavit, it appears that the petitioner had sometime in the month of April, 1991, entered into the said land and had started digging a well. The Gram Panchayat had immediately, on 11th April, 1991, requested the Mamlatdar to restrain the petitioner from carrying on his illegal activities. The petitioner was also issued notice on 11th April, 1991 calling upon him to desist from digging well on the said land. A panchnama was prepared on 11th April, 1991 at the instance of the concerned authority, in presence of Talati-cum-Mantri. The existence of a well having depth of 3 feet is recorded. It is stated that the land was not enclosed by a fence but a thorn fencing was being made on one side of the said land and was in progress at the time of preparation of the panchnama. Thus, it is apparent that on the date of his application, the petitioner was not in occupation of the said land and the Collector, Mehsana having rejected his application on 2nd April, 1991, the petitioner encroached upon the said land on or before 11th April, 1991 and started digging a well and raising the fence with a view to creating evidence in his favour. Since the petitioner was not in possession of the said land, the question of regularization in consonance with Government Resolution dated 8th January, 1980 shall not arise. Both the authorities below have rightly rejected the application made by the petitioner. No interference is warranted. The petition is dismissed with costs. Rule is discharged. Interim relief is vacated.

[Ms. R.M Doshit, J.]